Porterville, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

| | | |
|---|---|---|
| BAIRD-NEECE PACKING CORPORATION,<br><br>Respondent,<br><br>and<br><br>UNITED FARM WORKERS OF AMERICA, AFL-CIO,<br><br>Charging Party. | } | Case Nos. 85-CE-37-D<br>85-CE-46-D<br>85-CE-73-D<br><br>14 ALRB No. 16 |

DECISION AND ORDER

On June 24, 1987, Administrative Law Judge (ALJ) Thomas Sobel issued the attached Decision and recommended Order in this matter. Thereafter, Baird-Neece Packing Corporation (Respondent or Employer) and General Counsel each timely filed exceptions to the ALJ's Decision along with supporting briefs, and Respondent and General Counsel filed response briefs.

The Agricultural Labor Relations Board (ALRB or Board) has considered the record and the ALJ's Decision in light of the exceptions and briefs of the parties and has decided to affirm the ALJ's rulings, findings and conclusions only to the extent consistent herewith, and to issue the attached Order.

Ricardo Magdaleno

The ALJ found that the orange-picking crew led by Maria Elena (Molly) Gonzales was involved in two work stoppages during February 1985, and that Gonzales and her husband David regarded Ricardo Magdaleno as the leader of the stoppages. The ALJ

credited employees' testimony that Molly Gonzales told Magdaleno she was going to have him fired for organizing the workers.

On the morning of Magdalene's discharge, it was clear to everyone in the crew when they assembled for work that the first rows of trees had light picking. Several employees, including Magdaleno, testified that because no one in the crew wanted to pick the first set of trees, everyone simply waited around for Molly to assign the bad set. Molly then assigned the first set to Magdaleno, who refused the assignment because he felt she had no basis for singling him out. When Magdaleno walked further into the trees to seek a better set, Molly followed him and told him to return to the first set. When he refused, Molly discharged him.

Molly told her husband what had happened, and David tried to get Magdaleno to accept an alternative such as sharing the assigned set with another worker, or picking part of a bin but getting paid for a full bin. Magdaleno refused, and David thereupon affirmed the discharge and assigned the first set of trees to another employee.

The ALJ discredited Molly's testimony that Magdaleno was the first person ready to start work, and credited the testimony of several crew members that Magdaleno was no more "first ready" than the other employees. We affirm the ALJ's conclusion that Molly unlawfully assigned the inferior set of trees to Magdaleno in retaliation for his protected concerted activity,[1/] and that

---

[1/]We also affirm the ALJ's implicit finding that Molly's asserted reason for the assignment was pretextual. The ALJ therefore erred in referring to "the dual motive test" in regard to the

(Fn. 1 cont. on D. 2.)

Respondent thereby violated section 1153(c) and (a) of the Agricultural Labor Relations Act (ALRA or Act).[2/]

We also affirm the ALJ's conclusion that Magdalene's discharge did not violate the Act. However, we find that the ALJ's "constructive discharge" analysis was inappropriate as applied to the Employer's actual discharge of Magdaleno.[3/] Rather, we believe the ALJ should have applied a Wright Line analysis to Magdalene's discharge.[4/] under the reasoning of Wright Line, once General Counsel has established a prima facie case showing that union activity was a motivating factor in the employer's disciplinary action, the burden shifts to the employer to demonstrate that it had a legitimate business reason for its action. If evidence shows that the employer's action involved a

---

(Fn. 1 cont.)

assignment, since a dual motive analysis is not applicable in a pretext situation. (See Wright Line, Inc. (Wright Line) (1980) 251 NLRB 1083 [105 LRRM 1169], enforced, 662 F.2d 899 (1st Cir. 1981) [108 LRRM 2513], cert, den., 455 U.S. 989 (1982) [109 LRRM 2779].

[2/]All section references herein are to the California Labor Code unless otherwise specified.

[3/] Applying his "constructive discharge" analysis, the ALJ concluded that there was insufficient evidence to find that Magdalene's assignment was so onerous or unpleasant as to justify his refusal to accept it.

[4/]Although we have found that the ALJ incorrectly applied a dual motive analysis to Magdalene's work assignment, we find that a dual motive analysis is appropriate as applied to his discharge. Since we found that the Employer did not have a legitimate business reason for assigning the work to Magdaleno in particular, we concluded that the basis for the assignment was pretextual and that only an unlawful motive was present. However, as we explain more fully infra, the Employer's decision to discharge Magdaleno involved both a legitimate business motive and an improper reaction to his protected activity, thus necessitating a dual motive analysis.

dual motive -- i.e., that the employer's decision involved both a legitimate business reason and a reaction to the employee's protected activity -- then the employer must demonstrate that it would have taken the same action even in the absence of the employee's protected activity.

Applying that analysis herein, we conclude that although the assignment itself was discriminatorily made because of Magdalene's protected concerted activities, Respondent would have discharged Magdaleno even in the absence of those activities. Although he was discriminatorily chosen for the work, someone had to do it, and in fact another crew member did pick the inferior set. Further, Respondent tried to make the job less onerous by offering Magdaleno a number of options designed to reduce the advantage of having to pick the first set. Thus, there was no evidence that Respondent was trying to get Magdaleno to quit, or that it would not have fired him but for his protected activity. Rather, Respondent discharged him for insubordination, as it was entitled to do in the absence of proof of discriminatory discharge.

Juan and Rufina Chavez

Juan Chavez was one of the most visible union supporters at Respondent's place of business. On the day Chavez was discharged, he had asked packing house manager John Hall to hire someone Chavez had brought to work with him. When Hall refused, Chavez asked Hall why he hired only people who did not support the Union. Hall reacted angrily, saying he could hire and fire whomever he wanted. Shortly after the encounter, supervisor

Ramiro Roman approached Chavez and abruptly told him to get down from his ladder, saying, "If you are going to continue talking, take the ladder out." Juan and Rufina Chavez testified that Roman thereupon discharged both of them; however, Respondent contended that Roman specifically told Rufina that she could continue working. Respondent also asserted that Juan was terminated not for talking about the Union but for refusing to cease his alleged continual threatening and cursing of certain co-employees.

The ALJ found that General Counsel established a prima facie case consisting of Juan Chavez' strong union support, his encounter with John Hall regarding the hiring of union supporters, and his abrupt termination by Roman. The ALJ further found that Respondent's defense (that Chavez was verbally abusive to other crew members) was not supported by the testimony of Marina Rodarte, one of the women whom Chavez allegedly threatened and cursed. According to Rodarte, the worst that Chavez had said was to accuse her family of receiving favorable treatment from Respondent and to tell her that he was going to be their "daddy" when the Union won. Since neither of the statements Rodarte attributed to Chavez constituted the sort of verbal abuse that Respondent's witnesses claimed Chavez had uttered, the ALJ concluded that Respondent's stated motive for the discharge was pretextual. (Pottsville Bleaching Co. (1985) 275 NLRB 1236 [120 LRRM 1039].)

In cases where an employer's stated motive for a discharge is false, the trier of fact may properly infer that there is another, unlawful motive if the surrounding facts tend to

reinforce that inference. (Shattuck Denn Mining Corp. v. NLRB (9th Cir. 1966) 362 F.2d 466 [62 LRRM 2401].) We agree with the ALJ's conclusion that Rodarte's testimony did not support Respondent's defense that Juan Chavez was discharged because he threatened and cursed other employees or refused to stop doing so. In view of the surrounding facts (Chavez[1] strong union support, the angry reaction of John Hall to Chavez[1] questioning him as to why he hired only people who did not support the Union, and Chavez' abrupt termination by Roman shortly after the encounter with Hall), we also agree with the ALJ's conclusion that the Employer seized on Chavez' comments as a pretext for terminating him, and thus sought to disguise its true, unlawful motive in discharging Chavez. We therefore affirm the ALJ's conclusion that Respondent's stated reason for discharging Juan Chavez was pretextual, and uphold his finding that Chavez was discriminatorily discharged.

Regarding Respondent's claim that Rufina Chavez quit when Juan was fired, the ALJ found some plausibility to that assertion in the fact that originally no charge was filed on her behalf. Nevertheless, because he found that Respondent's stated reason for terminating Juan Chavez was totally contrived, the ALJ refused to credit Respondent's assertion that Rufina quit, and he concluded that she, too, had been discriminatorily discharged.

Respondent excepted to the ALJ's ruling that Rufina Chavez' claim was not barred by the statute of limitations (§ 1160.2). Respondent had no notice of Rufina[1]s claim until the complaint issued in September 1986, some sixteen months after Juan

Chavez' charge was filed. While Respondent was allowed to present evidence regarding Rufina at the hearing, Respondent argued, that opportunity was not sufficient to overcome the lack of adequate notice.

We find that the ALJ correctly applied ALRA and National Labor Relations Act (NLRA) precedent in concluding that the allegations relating to Rufina Chavez[1] claimed discharge were not barred by the statue of limitations.

In one of the NLRB cases cited by the ALJ on the statute of limitations question, N.L.R.B. v. Raymond Pearson, Inc. (5th Cir. 1957) 243 F.2d 456 [39 LRRM 2679], the employer argued that allegations in the complaint not specifically included in the original charges were barred by the NLRA's statute of limitations.— During the course of the hearing, the General Counsel had been permitted to amend the complaint by adding allegations of threats of reprisal and interrogation of the same general kind — and by the same supervisor — as were originally alleged in the complaint. The Court of Appeals noted that in NLRB cases,

---

[5/] Section 10(b) of the NLRA reads, in pertinent part:

> [N]o complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made .... Any such complaint may be amended by the member, agent, or agency conducting the hearing or the Board in its discretion at any time prior to the issuance of an order based thereon ....

The pertinent language of the ALRA's statute of limitations, section 1160.2, is identical to that appearing in the NLRA.

> . . . the complaint is the first technical "pleading" and that the charge simply sets in motion the investigation to determine whether or not the complaint shall issue. Technical precision is not, therefore, required in the charge, and it is sufficient if it informs the alleged violator of the general nature of the violation charged against him and enables him to preserve the evidence relating to the matter. (N.L.R.B. v. Raymond Pearson, Inc., supra, 39 LRRM at p. 2680. )

The Pearson court held that the original charge provided the employer with sufficient notice of allegations added to the complaint during the hearing, and that the amendments[6/] were not barred by the statute of limitations because the unlawful conduct of the supervisor occurred within six months prior to the filing of the charge and was encompassed by the charge. (_Id., at pp. 2680-2681.)

In N.L.R.B. v. Fant Milling Co. (1959) 360 U.S. 301 [44 LRRM 2236], the NLRB's General Counsel had included in the complaint an allegation of a unilateral wage increase granted by the employer four months after the union filed a refusal to bargain charge. The U. S. Supreme Court overruled the Court of Appeals' holding that the allegation was barred by the statute of limitations. The Supreme Court stated:

> A charge filed with the Labor Board is not to be measured by the standards applicable to a pleading in a private lawsuit. Its purpose is merely to set in motion the machinery of an inquiry .... To confine the Board in its inquiry and in framing the complaint to the

---

[6/]In the instant case, the complaint was not amended but, rather, contained allegations not previously included in a charge. However, the reasoning of the Court of Appeals decision is equally applicable to the situation herein.

> specific matters alleged in the charge would reduce the statutory machinery to a vehicle for the vindication of private rights. This would be alien to the basic purpose of the Act,
> (N.L.R.Bj. v. Fant Milling Co. , supra, 44 LRRM at p. 2238.)

Thus, the Supreme Court continued,

> Once its jurisdiction is invoked the Board must be left free to make full inquiry under its broad investigatory power in order properly to discharge the duty of protecting public rights which Congress has imposed upon it. (Id. at pp. 2238-2239.)

Consequently, the Supreme Court held, the national board was not precluded from adjudicating unfair labor practices (ULP) which are related to those alleged in the charge and which grow out of them while the matter is pending before the board. (Id., at p. 2239.)

In the case at hand, Respondent's alleged discharge of Rufina Chavez is closely related to the discharge of her husband Juan, since the two alleged discharges occurred at the same time under the same circumstances and were allegedly carried out by the same supervisor. Because the statute of limitations language contained in the NLRA is identical to that contained in the ALRA, there is no basis for finding NLRA precedent on this issue inapplicable. Moreover, recent ALRA precedent is in accord with this interpretation of section 1160.2. (Duke Wilson Company (1986) 12 ALRB No. 19.)[7/] Therefore, we uphold the ALJ's ruling that Rufina Chavez' claim is not barred by the statute of limitations.

However, we overrule the ALJ's ultimate conclusion that

---

[7/]See also G. W. Galloway Co., v. NLRB (D.C. Cir. Sept. 9, 1983) F.2d ___(Dock. No. 86-1540) [129 LRRM 2370].)

Rufina Chavez was discriminatorily discharged. Juan Chavez claimed that when Roman told him to get down from his ladder (and leave), Roman said, "You and your wife." Yet if those were the words Roman used, we find it inherently improbable that, in describing the circumstances of his termination to the UFW representative who assisted him in preparing the ULP charge, Juan Chavez would not have told the union representative that his wife was fired at the same moment he was fired, if that had in fact occurred. Since no charge was filed concerning Rufina, we assume that Juan did not tell the union representative that his wife was fired. This circumstance leaves us unconvinced that Rufina was discharged at all.[8/] We therefore find that General Counsel failed to establish a prima facie case that Rufina Chavez was unlawfully discharged.

## ORDER

By authority of Labor Code section 1160.3, the Agricultural labor Relations Board (Board) hereby orders that Respondent Baird-Neece Packing Company, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Discharging, or otherwise discriminating against any agricultural employee in regard to hire or tenure or employment because he or she has engaged in concerted activity protected by section 1152 of the Agricultural Labor Relations Act (Act).

---

[8/] Unlike the ALJ, we do not find that our disbelief of Respondent's stated reason for terminating Juan Chavez necessarily requires a disbelief of its claim that Rufina quit rather than being discharged.

(b) Threatening any agricultural employee with loss of employment or any other change in terms and conditions of employment, or making any changes in terms or conditions of employment because the employee has engaged in union activity or protected activity.

(c) In any like or related manner interfering with, restraining or coercing any agricultural employee in the exercise of the rights guaranteed under the Act.

2. Take the following affirmative actions which are deemed to effectuate the policies of the Act:

(a) Offer to Juan Chavez immediate and full reinstatement to his former or substantially equivalent position without prejudice to his seniority or other employment rights or privileges.

(b) Make whole Juan Chavez for all losses of pay and other economic losses he suffered as a result of the discrimination against him, such amounts to be computed in accordance with established Board precedents, plus interest thereon computed in accordance with our Decision and Order in E. W. Merritt Farms (1988) 14 ALRB No. 5.

(c) Preserve and, upon request, make available to this Board and its agents, for examination, photocopying, and otherwise copying, all payroll records, social security payment records, time cards, personnel records and reports, and all other records relevant and necessary to a determination, by the Regional Director, of the backpay periods and the amounts of backpay and interest due under the terms of this Order.

(d) Sign the Notice to Agricultural Employees attached hereto and, after its translation by a Board agent into all appropriate languages, reproduce sufficient copies in each language for the purpose set forth hereinafter.

(e) Mail copies of the attached Notice, in all appropriate languages, within 30 days after the date of issuance of this Order, to all agricultural employees employed by Respondent from February 21, 1985, to February 21, 1986.

(f) Post copies of the attached Notice, in all appropriate languages, in conspicuous places on its property for 60 days, the period(s) and place(s) of posting to be determined by the Regional Director, and exercise due care to replace any Notice which has been altered, defaced, covered, or removed.

(g) Arrange for *a* representative of Respondent or a Board agent to distribute and read the attached Notice, in all appropriate languages, to all of its employees on company time and property at time(s) and place(s) to be determined by the Regional Director. Following the reading, the Board agent shall be given the opportunity, outside the presence of supervisors and management, to answer any questions the employees may have concerning the Notice or their rights under the Act. The Regional Director shall determine the reasonable rate of compensation to be paid by Respondent to all nonhourly wage employees in order to

compensate them for time lost at this reading and during the question-and-answer period.

Dated: December 15, 1988

BEN DAVIDIAN, Chairman[9] JOHN

P. MCCARTHY, Member

GREGORY L. GONOT, Member

IVONNE RAMOS RICHARDSON, Member

[9]The signatures of Board Members in all Board Decisions appear with the signature of the Chairman first, if participating, followed by the signatures of the participating Board Members in order of their seniority.

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the Delano Regional Office, the General Counsel of the Agricultural Labor Relations Board (Board) issued a complaint which alleged that we, Baird-Neece Packing Company had violated the law. After a hearing at which each side had an opportunity to present evidence, the Board found that we did violate the law by threatening to discharge Ricardo Magdaleno and by assigning him to less desirous work because of his protected concerted activities and by discharging Juan Chavez because of his union activities. The Board has told us to post and publish this Notice. We will do what the Board has ordered us to do.

We also want to tell you that the Agricultural Labor Relations Act is a law that gives you and all other farm workers in California these rights:

1. To organize yourselves;
2. To form, join, or help unions;
3. To vote in a secret ballot election to decide whether you want a union to represent you;
4. To bargain with your employer about your wages and working conditions through a union chose by a majority of the employees and certified by the Board;
5. To act together with other workers to help and protect one another; and
6. To decide not to do any of these things.

Because it is true that you have these rights, we promise that:

WE WILL NOT do anything in the future that forces you to do, or stops you from doing, any of the things listed above.

WE WILL NOT threaten to discharge or assign less desirous work to any employee, or discharge any employee because he has engaged in protests over wages or other working conditions.

WE WILL reimburse Juan Chavez for all losses of pay and other economic losses he has suffered as a result of our discriminating against him plus interest and in addition offer him immediate and full reinstatement to his former or substantially equivalent position.

DATED: Baird-Neece Packing Company

By: _____
(Representative) (Title)

If you have a question about your rights as farmworkers or about this Notice, you may contact any office of the Agricultural Labor Relations Board. One office is located at 711 North Court Street, Suite A, Visalia, California 93291. The telephone number is (209) 627-0995.

This is an official Notice of the Agricultural Labor Relations Board, an Agency of the State of California

DO NOT REMOVE OR MUTILATE

CASE SUMMARY

Baird-Neece Packing Corporation (UFW)

14 ALRB No. 16
Case Nos. 85-CE-37-D
85-CE-46-D
85-CE-73-D

ALJ DECISION

General Counsel alleged that, because of Ricardo Magdalene's participation in a work stoppage and other protected concerted activity, the Employer had threatened to discharge Magdaleno, had discriminatorily assigned him to more onerous work, and had unlawfully discharged him when he refused to perform the more onerous work. The ALJ found that the Employer had unlawfully threatened to discharge Magdaleno and had discriminatorily assigned more onerous work to him. However, the ALJ, applying a "constructive discharge" analysis, concluded that Magdaleno had not been unlawfully discharged since the work assignment was not so onerous or unpleasant as to justify his refusal to accept it.

General Counsel also alleged that the Employer had discriminatorily discharged Juan Chavez and his wife Rufina Chavez because of Juan Chavez' support for the Union. The Employer's defense was that it fired Juan Chavez because he was verbally abusive to other crew members. The Employer also contended that Rufina Chavez was not discharged but had quit her job. The ALJ found that the Employer's defense was not supported by the evidence, and concluded that its stated motive for discharging Juan Chavez was pretextual. Because he found that the Employer's alleged reason for terminating Juan Chavez was totally contrived, the *ALJ* refused to credit the Employer's assertion that Rufina Chavez had quit her job, and he concluded that she, too, had been discriminatorily discharged.

The ALJ also concluded that, although Rufina Chavez' claim was not included in the original charge relating to Juan Chavez, her claim was not barred by the statute of limitations because the facts and circumstances of her alleged discharge were sufficiently related to those of her husband.

BOARD DECISION

The Board affirmed the ALJ's findings that the Employer had unlawfully threatened to discharge Ricardo Magdaleno and had discriminatorily assigned more onerous work to him. The Board also affirmed the ALJ's conclusion that Magdalene's discharge did not violate the Act. However, the Board disavowed the ALJ's "constructive discharge" analysis as inappropriate, and instead applied a Wright Line analysis, finding that Magdaleno would have been discharged for refusing the work assignment even in the absence of his union activities.

The Board affirmed the ALJ's conclusion that Juan Chavez was discriminatorily discharged because of his union activities. The Board also concluded that the ALJ had correctly applied ALRA and NLRA precedent in concluding that the allegations relating to Rufina Chavez were not barred by the statute of limitations. However, the Board overruled the ALJ's ultimate conclusion that Rufina Chavez was discriminatorily discharged. The Board found it inherently improbable that, in describing the circumstances of his discharge to the union representative who assisted him in preparing his unfair labor practice charge, Chavez would not have told the representative that his wife was fired at the same moment he was fired, if that had in fact occurred. The Board concluded that General Counsel had failed to establish a prima facie case that Rufina Chavez was discharged because of her husband's involvement in union activity.

* * *

This Case Summary is furnished for information only and is not an official statement of the case, or of the ALRB.

* * *

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

| | | |
|---|---|---|
| In the Matter of:<br><br>BAIRD-NEECE PACKING CORPORATION,<br><br>Respondent,<br><br>and<br><br>UNITED FARM WORKERS OF AMERICA, AFL-CIO,<br><br>Charging Party. | } | Case Nos. 85-CE-37-D<br>85-CE-46-D<br>85-CE-73-D |

Appearances:

William S. Marrs Marrs and Robbins 25600 Rye Canyon Road Valencia, California for the Respondent

William J. Lenkeit
711 N. Court Street, Suite A
Visalia, California
for the General Counsel

Before: Thomas Sobel
Administrative Law Judge

DECISION OF ADMINISTRATIVE LAW JUDGE

THOMAS SOBEL, Administrative Law Judge:

This case was heard by me in Porterville, California on December 11, 12 and 17, 1986 and on April 15, 1987.[1] General Counsel issued a First Amended Complaint on November 10, 1986 alleging that on or about March 15, 1985 Respondent discharged foreman Alfredo Gonzales for his refusal to commit acts in violation of the ALRA; that on or about February 21, 1985 Respondent harassed, threatened and coerced Ricardo Magdaleno because of his protected concerted activities; that on or about March 20, 1985 Respondent discriminatorily discharged Ricardo Magdaleno and Rogelio Alfaro because of their protected concerted activities and because the former filed charges with the ALRB; that on or about April 29, 1985 Respondent discriminatorily discharged Juan and Rufina Chavez because of their protected concerted activities; that on or about August 5, 1985 Respondent discriminatorily discharged Jose Aguilar because of his union and concerted activities; and, finally, that on or about September 23, 1985 Respondent discriminatorily discharged Andres Alvarez because of his protected concerted activities. Respondent denied each of the allegations of illegal acts. At the hearing and in his Post-Hearing Brief, General Counsel only presses the claims of

[1]The long gap in hearing dates was occasioned by the incapacity of a witness who was not available to testify on the originally scheduled hearing dates.

Ricardo Magdaleno and Juan and Rufina Chavez. THE ALLEGATIONS CONCERNING RICARDO MAGDALENO

Ricardo Magdaleno began work for Respondent as an orange picker in 1983. His forelady was Maria Elena (Molly) Gonzales. Active in the union's successful organizing campaign in early 1985, Magdaleno passed out authorization cards and spoke to his co-workers. Although Magdaleno provided no specific testimony that either Molly, or any other supervisor, observed his organizing efforts, another employee, Manuel Gonzales, related that Molly once chided him for paying attention to Ricardo and, when Manual asked her why she spoke of Ricardo, Molly replied because he was "deeper" in the union. (I: 52.) Whatever the level of Molly's awareness of Ricardo's election activities, there is no question that he was among the leaders of certain job actions which took place in his crew a few weeks before his termination.

Molly's husband, David Gonzales, who is presently *a* correctional officer but formerly employed by Respondent,[2] testified about a series of wage disputes which began on February 21, 1985. According to him, the crew had been at work

[2]Respondent contends David Gonzales was, along with Molly, foreman of Ricardo's crew; some of the employees claim to be unaware of this; others regarded him as a foreman. In view of the concurrence between the testimony of some employees and that of Respondent's witnesses, *I* take it as established that David Gonzales is a foreman.

for three days in a grove with a relatively light crop, as a result of which the employees were becoming increasingly upset with the wage they were getting. On the third day (which was supposed to have been the crew's last in that particular grove), the packing house informed David Gonzales that the crew had to spend another day in the grove to meet the quota for that ranch. In view of the lightness of the crop, however, the packing house agreed to pay a $.50 premium retroactive to the first day in the grove. According to him, "they all said that's fine, we'll be here tomorrow." (Ill: 5.)

A few hours after the start of work the next day, Molly saw Magdaleno walking from set-to-set with some other members of the crew. When Molly asked Magdaleno what was happening, he told her the group wanted to speak to her husband about more money. (Ill: 29-30.) David testified his wife told him sometime between 9:00 - 10:00 a.m. that the crew was refusing to work unless it got more money, as a result of which he left what he was doing and went to see what was happening whereupon he observed part of the crew at work and the other part sitting down.

He asked the seated group what was going on and Javier Gonzales said the crew wanted more money. David reminded the men that the packing house was giving them a premium retroactive to the first day in the grove and further that they had all agreed to that wage on the previous day. He asked "Why do you wait till the last day to — to pull a sit-down and want more money...? And,

and they say, well we just think we need more money now cause we're on the side of the hill, and we should have more money." (Ill: 7.)

David asked how much the crew wanted and this time Ricardo spoke, asking for $14/bin. David exclaimed that was too high and he wasn't about to do anything about such a demand because he had other things to do. "So I told them all I can do is talk to the rest of the pickers, if they all [want to] follow you out, you wait till tomorrow, I told Ricardo you come to my house at 6:00 that evening and I would tell you what the packing house said." (III: 7-8.) According to him, he then talked to the rest of the pickers, telling them their co-workers wanted more money, and giving them the choice of walking out or picking at the agreed-upon rate. Everyone left.

Molly added some significant details to her husband's account. According to her, when Ricardo and his group decided not to return to work, she announced -— not to anyone in particular, but to everyone who was walking out —- something like "I'm going to really take care of you" or "I'm going to get you fucked up." (III: 31-32.) It should be noted that, as Molly testified to these words, she completely lost her composure, began to cry on the witness stand and could not continue her testimony for several minutes. When asked what she meant by this, she testified she meant to prevent the crew from getting unemployment:

> I had talked to my sister beforehand, when this came -— when all this happened, I felt that -— I had called my sister, she worked for the unemployment office.....

* * *

> I had called her as soon as I found out that the union coming in – I asked her what happens if we have a walkout, or they refuse to pick? Is there anything *I* can do? And she said, the only thing you can do is go to the unemployment office and report them, and they can deny them benefits. (III: 33.)

David and Molly agree that David selected someone to come to their house later to find out what the packing house said about their demand. Unlike David, who testified he nominated Ricardo for the task, Molly testified he asked two other employees.[3] Molly also testified that when she returned to the packing house she told John Hall what her sister had said about denying benefits, and asked him to call EDD to confirm it. According to her, Hall did just that and was told to send in the names of the employees who walked out, which he subsequently did. Ramiro Roman, the company's employee service representative, testified it was he who called EDD to find our about denying unemployment benefits to the employees.

These events took place on a Thursday, which turned out to be the last day of work that week. David testified that on the following day, Friday, when the crew members picked up their checks, he told them that David White would be present at the start of work on Monday, February 25, to talk to the crew about

[3]Despite Molly's and David's mutually corroborative testimony on this point, neither they nor any employee testified that Ricardo or anyone else came to see them that evening.

the picking rate. White was present the following Monday, and, after he explained that he could give no more raises, he left and the crew went to work. According to David Gonzales, after the crew went to work, Ricardo and his people walked out again, saying they wouldn't pick until White returned with an offer for more money. Gonzales said he reminded them they had agreed to the price, but that if they didn't want to pick, that was fine. According to him, they sat around for an hour or so before he gave them the choice of pairing up in order to fill the bins faster. They took him up on the offer, went back to work, "filled up one bin", announced they wouldn't do anymore and left the fields at 11:30. The rest of the crew worked until 1:30-2:30 in the afternoon.[4]

Molly filled in a few other details, testifying that it was again she who told her husband that there was a stoppage and that as she was on her way back through the grove after speaking to him, she overheard one of the workers mention that the packing house had reported their previous walkout to EDO. Upon hearing this, she told the workers that if they wanted to get mad at anyone about reporting them to EDO, they should get mad at her, because it was she who was responsible for reporting them.

---

[4]The time sheet (RX 4) indicates that quite a few members of the crew worked only 3 hours on February 25, 1985. Among those working only 3 hours was Ricardo Magdaleno. It appears from the hours on RX 6, the time sheet for February 18-20 on the same ranch, that a three hour workday is a short day.

The employees relate what *is* certainly a more compressed, but perhaps an entirely different, version of events. Ricardo Magdaleno, for example, testified about only one stoppage when David White was summoned. According to him, he and Javier Gonzales led this one time stoppage in order to get higher wages. When David White told the crew he couldn't pay more than what he was already paying, the crew went back to work. When they broke for lunch they once again asked Molly for more money, at which point she began to swear and told him she was going to have him fired for organizing the people. (I: 6.) On cross-examination, Ricardo also testified that Molly told the crew:

> "[You]...do not want to work and you're getting unemployment and she said being that you don't want to work, right now I'm going to go over to the unemployment office and tell them that you refuse to work." (I: 19)

According to Ricardo, the crew went back to work after lunch and worked until 4:00. He denied that the entire crew ever engaged in a work stoppage.

Manuel Gonzales, another employee, also testified about a single work stoppage in February 1985. When the crew entered a certain block in one of the groves, the employees noticed it was "bad." As a result, Javier and Ricardo asked "him" (presumably

---

[5]According to Magdaleno, Molly said "Go to hell, I don't need you for anything, all of you are just a bunch of son of bitches...." (I: 16.)

David Gonzales) for more money. When Gonzales refused to pay more, they asked him to call David White. When White refused to raise the price, the crew started picking. Around noontime, the crew went out again and "we were on our way out when Molly told Ricardo that she was going to find a way to get him fired." He also testified that Molly told Jaime and Ricardo she was going to report them to the unemployment office. Later that day, according to Manuel, she called him stupid for paying attention to Ricardo. (I: 46.) He denied that the crew had refused to pick in that grove prior to the incident he related. (I: 52.)

Like Ricardo and Manuel, Fernando Alfaro, another employee, testified he heard Molly say she was going to fire Ricardo; he also testified he heard Molly say something about unemployment insurance. Jaime Alfaro testified he heard Molly say she was going to report Ricardo and him to the unemployment office (I: 72). Like Ricardo, he insisted the crew worked the entire day David White came out (I: 76), but he also testified there had been a previous work stoppage. Magdaleno subsequently filed Charge No. 85-CE-37-D on March 3, 1985 asserting that Molly threatened him.

So much for both background to the 1153(c) and (d)[6] allegation, as well as the substance of the 1153(a) allegation; it

[6]Although I included Magdalene's filing of the charges for chronological purposes, it will play no further role in my analysis of this case since I am not persuaded it figured in Respondent's treatment of Magdaleno.

is now appropriate to turn to the matter of Magdalene's termination.

According to Magdaleno, when the crew assembled for work on the morning of his termination, it was clear that the first rows of the orchard had light picking. Although David Gonzales testified the trees were not as bad as they looked, he did admit they looked bad.[7] (III: 17) General Counsel's and the company's witnesses also agree that, prior to the crew's being given the order to start work, the employees were milling about waiting to begin. During this time, their ladders and equipment remained on the company truck. It is after the order to begin work was given that accounts about what happened begin to seriously diverge.

According to Magdaleno, no one wanted the first sets because they were so obviously bad. As a result, when Molly called the start of work, he, like everyone else, bypassed the bad trees and went deeper into the grove for a better set. Fernando Alfaro initially testified that because no one in the crew wanted the first sets, everyone simply waited around until after Molly had assigned the bad sets (I: 60-61); on cross-examination, he, too, testified that most of the crew bypassed the bad trees to select better sets deeper in the grove. (I: 68) Jaime Alfaro testified that because no one wanted the first set, no one wanted

[7]Apparently, some sheep had been in the grove the previous evening and had eaten the leaves and fruit on the lower part of the trees.

to enter the grove. Although differing in details, the consistent sense of the employees' testimony is that the entire crew balked at picking the first set.[8]

Magdalene and Fernando and Jaime also agree that when it became clear that no one wanted the first set, Molly began to assign the sets.. Magdaleno was assigned the first set. Magdaleno admits he refused the assignment because he felt Molly had no basis upon which to assign him to it.[9] According to him, Molly followed him into the grove as he sought another set, telling him his set was "back there" and "you're not going to even do any picking around here, now take the ladder out...and leave. Go tell the union, go tell Lupe Martinez,[10] or whatever you want, do whatever you want." Jaime Alfaro testified that Molly told Magdaleno, "Things are done here the way I say...if you don't want to do the set take your ladder out. And go ahead and run and tell Lupe Martinez that I fired you, see what he can do for you."

---

[8]It was established that, when the trees were of equal quality, the employees would choose their own sets; the first ones into the grove taking the first set and those following taking the next sets in the order in which they entered the grove. The bad sets presented a unique situation.

[9]Magdaleno testified about the incident on both direct and cross-examination. Because his testimony on cross-examination was somewhat easier to follow *I* am relying on it for my own account. Although the two accounts differ in detail, the main lines of both are the same.

[10]Lupe Martinez is a union organizer. (I: 74)

David and Molly Gonzales tell a story significantly different in detail. According to David, the first sets were bad enough for him to anticipate there might be some problems starting up. As a result, after he told Molly to get the crew started, he sat by watching events unfold. (III: 21) He observed everyone getting their ladders and, in particular, that "Ricardo Magdaleno, Rogelio Gonzales, Fernando Alfredo, Jose Aaron and Jose Martinez" were the "first ones" to get their ladders, with Ricardo being the very first. He further observed Ricardo walking into the grove, dropping his ladder, walking out of the grove, and going over to his car. Upon seeing what Ricardo did, Fernando and Rogelio and the rest of the crew stopped and refused to proceed into the grove.

According to Molly, after David gave the order to start, Ricardo, Rogelio, Fernando and Jose Luis got their ladders (Ricardo being the first) and started into the grove with her following behind. Instead of continuing on and taking a set, Ricardo abruptly dropped his ladder and returned to his car. (Carmen Ortega, an employee witness, corroborated Molly and David's testimony on this point). The rest of the crew also stopped and refused to take any trees. At this point, both Molly and David testified contrary to the employees' account, David started to assign the sets with the bad-looking one going to Ricardo because he was the first one ready.

According to David, he left the scene immediately after making the assignments so that what followed is related entirely

by Molly. She testified that as she was making the last assignments, Ricardo trailed her and again took a set in the interior of the grove. She told Ricardo the set he chose was not the one he had been assigned, and she explained that he had received the assignment because he was the first one ready. When he objected, Molly told him he could do the set he wanted, so long as he did the other set. He refused again and Molly told him if he wouldn't agree to do the other set, she would fire him. Ricardo ignored her and again tried to take the set he had chosen. She then fired him and Rogelio who also refused to take his assigned set.[11]

More amazed at what she had done than angry, Molly went to find David to relate what had happened. David told her it sounded like she acted correctly, but that he would talk to Ricardo anyway. He told her to write up the ticket while he talked to Ricardo. According to David, he approached Ricardo and Rogelio, who by then were leaving the field, and asked them to inspect the trees they had refused. He explained they could still get fruit from the trees and even tried several ways to make picking the set more palatable to the two men, such as letting them share the bin, or paying them for a full bin no matter what

[11]lthough General Counsel initially alleged Rogelio was also discriminatorily discharged, he has abandoned any contention relating to him.

they picked, or letting Ricardo's brothers help so long as he picked his assigned set. When Ricardo refused, David affirmed the firing. He then assigned Carmen Ortega the set. It is not clear to me how much Ortega got from the one set; it appears that she and another worker got less than 2 bins from Ricardo's and Rogelio's sets. When asked how much she got from the trees she was assigned, she testified:

> "There—a bin and there was some left over surplus because they were two sets. I picked the first one, Ricardo's set and another lady, Amalia picked the other one." (III: 69.)

ANALYSIS AND CONCLUSIONS

General Counsel alleges two violations in connection with the preceding events: Molly's threat to Magdaleno and Magdalene's termination. With respect to the "threat", Respondent contends that Molly "in essence" told the crew "she was going to report them to the EDO...so that they would not be able to collect unemployment insurance if they walked out and that such a statement, referring to an employer's permissible response to a trade dispute, cannot be held to violate the Act." With regard to the discharge, Respondent contends that General Counsel failed to prove a causal connection between Magdalene's protected activities and its decision to terminate him.

Before turning to the events surrounding Magdalene's discharge, I shall state my conclusions about the stoppage(s). First, I credit Respondent that there were two stoppages on both February 21st and February 25th. David and Molly's accounts of

the February 21st stoppage are supported by the timesheets, as well as by the testimony of Jaime Alfaro. The February 25 episode, when David White came out and the one which was highlighted by the employees, is much more problematic; but I still credit Respondent's version. Although the employees testified they worked a full day, the timesheets show many of them including Ricardo Magdaleno, worked only 3 hours while others worked 4 or 5 hours and some even worked 6 hours (two employees, including Molly). Only those who worked 6 hours picked 3 bins, the rest of the employees' picked between 1 and 2 bins. If, on the one hand, the low yields are consistent with the employees' testimony that the grove was bad, absent evidence that those who worked longer hours did so only because they were assigned trees with more fruit, it seems more reasonable to conclude that the reason why Ricardo and the others worked 3, as opposed to 4 or 5 hours, is because they stopped working. Second, it appears from both David's and Molly's testimony that they regarded Ricardo as the leader of the stoppages. Thus, with respect to the February 21 incident, David Gonzales testified he invited Ricardo to stop by his house to inform him (as a representative of the crew) about the reaction of the packing house employees to the wage demand and Molly twice referred to the employees who walked out on the 21st as "Ricardo and his group." (III: 29, lines 25-26; p. 33, lines 24-25.) With respect to the events of the 25th, David Gonzales again identified Ricardo as spearheading the group who stopped work. (III: 9-10.)

Respondent has made no issue of the protected nature of the two work stoppages, which the testimony of its own witnesses has Magdaleno leading. As we have seen, General Counsel contends that Molly reacted to Magdalene's leadership first, by threatening him, and then by firing him. If an explicit threat be found, of course, an independent violation of the Act is made out just as alleged, but, equally important, the more plausible becomes General Counsel's theory that there is a causal connection between Magdalene's activities and Respondent's treatment of him.

I find Molly made the threat as alleged. Respondent's argument that Molly was essentially privileged to assert Respondent's right to protect its account against the employees' unemployment claims rests upon the factual premise that she either said or, in context, would have been understood to have said, that she was going to interfere with the employees' unemployment claims. It is certainly true that Molly testified that is what she meant to say and that some of the employees heard her say something about unemployment; but, no matter what she meant, the words Molly testified that she actually uttered have nothing to do with unemployment. They are naked threats which reasonably contrued, speak as much of firing as of anything else she might have had in mind, but didn't express. It is also true that some of the employees recall her speaking about reporting "them" to unemployment, but in view of Molly's testimony about what she actually said, I cannot view the employees' imprecise testimony

about what was said, or when it was said, as qualifying, or even necessarily relating, to the statements about which Molly testified. The next question is whether as the employees testified she threatened Ricardo specifically.

I credit the employees' account because of Molly's breakdown on the witness stand. Her loss of control, combined with her supplicating attitude toward David White (who was present as Respondent's party representative) conveyed so much guilt and contrition that I could not help but be convinced she threatened Magdalene. But this finding is not dispositive of the lawfulness of Magdalene's discharge. Since it is clear even in Magdalene's telling that he refused a direct order, other questions present themselves: first, whether, Magdalene's assignment to the "bad" set was in retaliation for his protected activities[12] and next, whether Molly's firing him for refusing to accept the assignment renders his discharge unlawful.

The evidence is mixed with respect to the question of the reason for assigning the "bad" set to Magdalene with the employees contending he was no more "first" to be ready than many others, and Respondent's witnesses contending he was "first" and, furthermore,

[12]I should also point out that in Respondent's version of the events leading up to Magdalene's termination, he was again leading a work stoppage, while in the employees' version he was not. Since I find the set assignment was made to retaliate against Magdaleno, it makes no difference what incident I regard as provoking the retaliation.

that Molly, who made the threat, did not make the assignment. Under the dual motive test, Respondent bears the burden of proving that it made the assignment for non-discriminatory reasons once General Counsel establishes a prima facie case that the assignment was discriminatorily made. General Counsel's prima facie case is a strong one, deriving force from the employees' testimony that Ricardo was no more first than others, that Molly made the assignment, and my previous finding that Molly made the threat. Against this, I must weigh Molly and David's testimony that David made the assignment, rather than Molly, and that he did so because Ricardo was first. For the following reasons, I find Molly made the assignments and that she did it out of spite.

I cannot emphasize strongly enough how expressive Molly's display of contrition was: so powerful was my impression of her consciousness of guilt that minor questions raised by her husband's testimony are answered by her demeanor. During the hearing I couldn't help but wonder why, if the set was bad enough for David to hang around waiting to see what would happen when work began, he only stayed long enough to assign the first sets, but not long enough to see what would ensue after he made the assignments. The question is answered by my concluding that David's testimony is a fabrication introduced solely for the purpose of weakening the causal connection between Molly's threats and the assignment of Magdaleno to the "bad" set. Secondly, since everyone agrees (1) that the crew milled about before the start of

work; (2) that it was obvious that the first set was bad; and (3) that the crew members typically took sets on a first in, first-set basis, it seems more plausible to me that, as General Counsel's witnesses testified, no one was quick "to be ready" because everyone knew, by convention, that the first one "ready" would take the first set. Thus, I credit the employees that Magdaleno did not distinguish himself by being first.

Our Board has previously determined that when a work order is given for discriminatory reasons, an employer may not lawfully discharge an employee for refusing to comply with it. Armstrong Nurseries (1983) 9 ALRB No. 53. However, the Board's decision was reversed by the Court of Appeal in Armstrong Nurseries, Inc. v. Agricultural Labor Relations Board (1985) 5 Civil No. F003150 on the grounds that it would not be conducive to the purposes of the ALRA to permit employees to disregard "facially valid work orders"; that instead of encouraging (by condoning) self-help in such circumstances, the Board should require employees to use the remedial mechanisms of the Act. The Court of Appeal decision was, in turn, ordered depublished by the Supreme Court on May 16, 1985. While the Court of Appeal opinion is of no precedential value because it was depublished, it nonetheless represents the law of the case; correspondingly the Board decision is of no precedential value either.

*In* view of the doctrinal confusion engendered by these decisions, it seems useful to me to essay an alternative analysis

which would permit the Board to take into account the retaliatory nature of Magdaleno's assignment as well as to weigh the appropriateness of his response. The NLRB has such a analysis in its treatment of constructive discharges which, though usually applied in cases where employees have actually quit their employment, also applies in cases where an employee is fired for refusing to accept discriminatory work assignments. Majestic Metal Specialties, Inc. (1951) 92 NLRB 1854, 1865; MPL Inc. (1967) 163 NLRB 952, 959. Under a constructive discharge standard, once an employer's retaliatory motive in making an assignment has been found, the question becomes whether the assignment was so onerous or unpleasant as to justify the employee's refusal to accept it. South Nassau Hospital (1985) 274 NLRB 1181; Superior Warehouse Grocers (1985) 277 NLRB No. 10, Slip opn.

Under such a standard, the question in this case becomes how bad was the set? The evidence as to this is mixed: on the one hand, there is the plain fact that none of the crew wanted the set Magdaleno refused, which says something (although General Counsel would have been better advised to present direct evidence as to exactly how such a set impacted on wage or working conditions); and, on the other hand, there is Ortega's testimony that she got (part of) a bin from it. To my mind there just isn't enough evidence to find the assignment so onerous or unpleasant as to justify Magdaleno's refusal to accept it. Moreover, there is David Gonzales[1] testimony that he offered Magdaleno a variety of

options which appear designed to reduce the disadvantage of having the set. Although discrediting other parts of David's testimony, I credit these. Far from being inherently incredible as General Counsel argues, David's story was not only not contradicted, but also seems in keeping with the rest of his testimony which I credit-- having generally credited his testimony about the stoppages -- about the measured responses he took to the two stoppages.[13] Accordingly, I find he made an effort to mollify Magdaleno and that although discriminatorily motivated, the assignment was not so unpleasant as to justify Magdalene's refusal to carry it out. Accordingly, I dismiss the allegation concerning Magdalene's discharge. However, in view of my finding that the assignment was discriminatorily made, I believe it warrants remedial action. I shall order Respondent to cease and desist from making such assignments in the future.

JUAN AND RUFINA CHAVEZ

The employees testified Juan Chavez was among the most visible union supporters. Respondent does not dispute that the day of Juan's termination, he asked the packinghouse manager, John Hall, to hire someone he brought to work with him. When Hall

[13]While I have discredited other parts of David's testimony, I am not bound to discredit all of it. *I* am inclined to credit this aspect of it because, as I said, it is consistent with other parts of his testimony that I credit; equally important, however, is that the testimony of General Counsel's witnesses was so limited in scope that I was never quite confident that I was getting the whole story from them.

demurred, Juan asked why Hall only hired people who did not support the union. Hall became angry and said he could hire and fire those whom he wanted. According to the employees, shortly after this encounter, Ramiro Roman approached Juan and abruptly told him to get down from his ladder, saying: "If you are going to continue talking, take the ladders out. You and and your wife." Rufina Chavez related the same events, but added that Juan responded to Roman that he would continue talking because he was not born mute.

According to Ippolito Gonzales, the Chavez's foreman, three other members of the crew, Anna Barrios, Marina Rodarte and Idelsa Lopez, had repeatedly complained to him that every time Juan Chavez passed them he swore at them. The morning that Roman fired Chavez, Gonzales had told Roman about the women's complaints. When Roman reminded Juan that he had told him "the other day not to be bothering that family", Juan replied that "those mother-fucking ladies are not in the union." Ramiro then said "If you continue talking to them, I'm going to stop you, and Juan replied "If you want to, stop me right now." The challenges were repeated and Ramiro fired him. Gonzales contends that Ramiro did not fire Rufina and that he specifically told her she could keep working; that it was she who chose to leave with her husband.

Ramiro Roman testified slightly differently; according to him, Gonzales told him the evening before the firing about the problem the "Rodartes" were having with Juan. When he asked

Ippolito the next morning what the problem was, Gonzales told him that Juan was threatening the girls and cursing them, saying that when the union came in he was going to be their boss. Roman corroborated the essential details of his encounter with Juan Chavez that had been related by Gonzales.

General Counsel's prima facie case consists of proof of Juan's strong union support, his encounter with Hall, and his abrupt termination. Respondent argues that Juan was fired because he was being abusive to other members of the crew. The trouble with Respondent's defense is that draws no support from the testimony of Marina Rodarte, one of the employees who Roman and Gonzales supposedly sought to protect. According to her, the worst that Juan said was to accuse her family of getting favorable treatment from Respondent and, on the day of his termination, to tell her that "he was going to be [their] daddy whenever the union would win." Since neither statement qualifies as the sort the verbal abuse that Respondent's witnesses made it out to be, I find Respondent's stated motive to be pretextual for "[w]hen the stated cause is unreasonable under the circumstances, that fact is itself evidence that the employer is seeking to disguise its true motive." Pottsville Beaching Co. (1985) 275 NLRB No. 175, p. 1238. Accordingly, I find that Ramon seized on Juan's comments as a pretext for terminating him.

It remains only to discuss the discharge of Rufina Chavez. As noted, Respondent contends Roman did not discharge

Rufina, but that she quit when Juan was fired. Although Respondent's version gains plausibility from the fact that neither Juan nor Rufina originally filed a charge alleging that she had been discriminatorily discharged, in view of my finding that Respondent's stated reason for its principal actions in this incident are totally contrived, I do not credit this aspect of its story either.

ORDER

By authority of Labor Code section 1160.3, the Agricultural Labor Relations Board (Board) hereby orders that Respondent BAIRD-NEECE PACKING COMPANY, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Discharging, or otherwise discriminating against any agricultural employee in regard to hire or tenure of employment because he or she has engaged in concerted activity protected by section 1152 of the Agricultural Labor Relations Act (Act).

(b) Threatening any agricultural employee with loss of employment or any other change in terms and conditions of employment, or making any changes in terms or conditions of employment because the employee has engaged in union activity or protected activity.

(c) In any like or related manner interfering with, restraining or coercing any agricultural employee in the exercise of the rights guaranteed of the Act.

2. Take the following affirmative actions which are deemed to effectuate the policies of the Act:

(a) Offer to Juan and Rufina Chavez immediate and full reinstatement to their former or substantially equivalent position without prejudice to their seniority or other employment rights or privileges.

(b) Make whole Juan and Rufina Chavez for all losses of pay and other economic losses he suffered as a result of the discrimination against them, such amounts to be computed in accordance with established Board precedents, plus interest thereon computed in accordance with our Decision and Order in Lu-Ette Farms, Inc. (Aug.18, 1982) 8 ALRB No. 55.

(c) Preserve and, upon request, make available to this Board and its agents, for examination, photocopying, and otherwise copying, all payroll records, social security payment records, time cards, personnel records and reports, and all other records relevant and necessary to a determination, by the Regional Director, of the backpay periods and the amounts of backpay and interest due under the terms of this Order.

(d) Sign the Notice to Agricultural Employees attached hereto and, after its translation by a Board agent into all appropriate languages, reproduce sufficient copies in each language for the purpose set forth hereinafter.

(e) Mail copies of the attached Notice, in all appropriate languages, within 30 days after the date of issuance

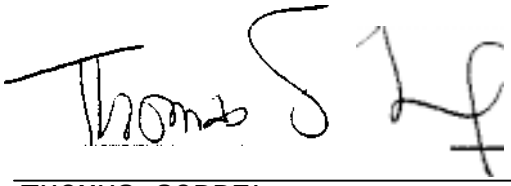
of this Order, to all agricultural employees employed by Respondent from February 3, 1985 to the date of issuance of this Order.

(f) Post copies of the attached Notice, in all appropriate languages, in conspicuous places on its property for 60 days, the period(s) and place(s) of posting to be determined by the Regional Director, and exercise due care to replace any Notice which has been altered, defaced, covered, or removed.

(g) Arrange for a representative of Respondent or a Board agent to distribute and read the attached Notice, in all appropriate languages, to all of its employees on company time and property at time(s) and place(s) to be determined by the Regional Director. Following the reading, the Board agent shall be given the opportunity, outside the presence of supervisors and management, to answer any questions the employees may have concerning the Notice or their rights under the Act. The Regional Director shall determine the reasonable rate of compensation to be paid by Respondent to all nonhourly wage employees in order to compensate them for time lost at this reading and during the question-and-answer period.

(h) Notify the Regional Director in writing, within 30 days after the date of issuance of this Order, of the steps Respondent has taken to comply with its terms, and continue to report periodically thereafter, at the Regional Director's request, until full compliance is achieved.

DATED: June 24, 1987



THOMUS SOBBEL
Administrative of Law

NOTICE TO AGRICULTURAL EMPLOYEES

After investigating charges that were filed in the Delano Regional Office, the General Counsel of the Agricultural Labor Relations Board (Board) issued a complaint which alleged that we, Baird-Neece Packing Company had violated the law. After a hearing at which each side had an opportunity to present evidence, the Board found that we did violate the law by threatening Ricardo Magdaleno and by assigning him to less desirous work because of his protected concerted activities and by discharging Juan and Rufina Chavez because of the union activities of Juan Chavez. The Board has told us to post and publish this Notice. We will do what the Board has ordered us to do.

We also want to tell you that the Agricultural Labor Relations Act is a law that gives you and all other farm workers in California these rights:

1. To organize yourselves;
2. To form, join, or help unions;
3. To vote in a secret ballot election to decide whether you want a union to represent you;
4. To bargain with your employer about your wages and working conditions through a union chosen by a majority of the employees and certified by the Board;
5. To act together with other workers to help and protect one another; and
6. To decide not to do any of these things.

Because it is true that you have these rights, we promise that:

WE WILL NOT do anything in the future that forces you to do, or stops you from doing, any of the things listed above.

WE WILL NOT threaten to or assign less desirous work to any employee, or discharge any employee because he has engaged in protests over wages or other working conditions.

WE WILL reimburse Juan and Rufina Chavez for all losses of pay and other economic losses they have suffered as a result of our discriminating against them plus interest and in addition offer them immediate and full reinstatement to their former or substantially equivalent positions.

DATED: Baird-Neece Packing Company

By: _____
(Representative) (Title)

This is an official notice of the Agricultural Labor Relations Board, an agency of the State of California. If you have a question, contact the Board at 711 North Court Street, Suite A, Visalia, California, (209)627-0995.

DO NO REMOVE OR MUTILATE. -